

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL CLUESMAN,

Defendant-Appellant.

UNPUBLISHED

January 4, 2005

No. 250146

Wayne Circuit Court

LC No. 03-004099-01

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm less than murder, MCL 750.84, and malicious destruction of property less than \$20,000, MCL 750.377a(1)(b)(i). The trial court sentenced defendant as a third habitual offender, MCL 769.11, to concurrent terms of two years, ten months to ten years for assault with intent to do great bodily harm less than murder and twelve months in jail for malicious destruction of property. He appeals as of right. We affirm.

Defendant and several friends were ejected from a bar after fighting with other patrons. Complainant Efren Equivel testified that a brawl ensued in the parking lot, and that defendant attempted to run over him with his vehicle. He jumped out of the way of defendant's vehicle, and the vehicle hit a truck. Equivel indicated that defendant's vehicle then struck Gustavo Lopez. Defendant denied that he attempted to strike anyone in the parking lot, and maintained that he was attempting to drive out of the parking lot because people were throwing objects at him and that he feared for his life. The jury acquitted defendant of the charge of assault with intent to do great bodily harm less than murder as to Lopez, but convicted him of the same charge as to Equivel, and also convicted him of malicious destruction of property.

Defendant argues that an irrelevant reference to Lopez's subsequent death by gunshot wound should be stricken from the presentence report. We disagree. Defendant did not object to the inclusion of the reference to Lopez's death in the presentence report at the time of sentencing, and has not demonstrated that the challenge was brought as soon as the inaccurate information was discovered. MCR 6.429(C); *People v Kimble*, 470 Mich 305, 313; 684 NW2d 669 (2004). The trial court did not make an independent finding that defendant was guilty of a crime in connection with Lopez's death, and made no reference to the information when passing sentence. No evidence shows that the inclusion of the information in the presentence report had any impact on the sentence imposed by the trial court. Defendant has not demonstrated the

existence of plain error warranting relief. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant next argues that he is entitled to resentencing because the trial court erroneously believed that he was to be sentenced as an habitual offender, and exceeded the guidelines without articulating substantial and compelling reasons for doing so, as required by MCL 769.34(3). We disagree. At sentencing the parties agreed that the guidelines, when adjusted for the habitual offender charge, recommended a minimum term range of five to thirty-four months for the offense of assault with intent to do great bodily harm less than murder. The trial court imposed a minimum term within that range. We affirm the sentence. MCL 769.34(10).

Defendant argues that the evidence produced at trial was insufficient to support his conviction of assault with intent to do great bodily harm less than murder. We disagree. In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Bulls*, 262 Mich App 618, 623; 687 NW2d 159 (2004); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). A trier of fact may make reasonable inferences from direct or circumstantial evidence in the record. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

The elements of assault with intent to do great bodily harm less than murder are: (1) an attempt or threat with force or violence to do bodily harm to another, i.e., an assault; and (2) an intent to do great bodily harm less than murder. This offense is a specific intent crime. *People v Parcha*, 227 Mich App 236, 239; 575 NW2d 316 (1997). The requisite intent can be inferred from the surrounding facts and circumstances. *People v Beaudin*, 417 Mich 570, 575; 339 NW2d 461 (1983). Minimal circumstantial evidence is sufficient to prove intent. *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985).

The evidence, as accepted by the jury, showed that defendant committed an assault when he drove his vehicle at Equivel. An assault is defined as "either an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery." *People v Grant*, 211 Mich App 200, 202; 535 NW2d 581 (1995). The fact that defendant did not strike Equivel is of no moment. *People v Harrington*, 194 Mich App 424, 430; 487 NW2d 479 (1992). The evidence that defendant attempted to strike Equivel with his vehicle supported an inference that defendant had the requisite intent to do great bodily harm less than murder. *Beaudin, supra*; *Strong, supra*. The evidence, viewed in a light most favorable to the prosecution, supported defendant's conviction of assault with intent to do great bodily harm less than murder. *Bulls, supra*; *Vaughn, supra*.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly